

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 5, 2009 Session

TOMMY WRIGHT, ET AL, v. CITY OF SHELBYVILLE, ET AL.

**Appeal from the Chancery Court for Bedford County
No. 25,630 Lee Russell, Judge**

No. M2009-00321-COA-R3-CV - Filed November 3, 2009

Property owners challenge an amendment to a zoning ordinance affecting their property on the ground that the content of the published notice was inadequate in violation of Tenn. Code Ann. § 13-7-203. Since the published notice failed to provide reasonable notice to landowners that their property may be affected, we find the notice to be insufficient. The Chancery Court is reversed and the ordinance declared invalid.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Reversed and Remanded**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and Richard H. Dinkins, JJ., joined.

Vanessa A. Jackson, Tullahoma, Tennessee, for the appellants, Tommy Wright, Norma Wright, Wright Paving Company, Inc. and Custom Stone, LLC.

Mary Byrd Ferrara, Nashville, Tennessee, for the appellees, City of Shelbyville, the Shelbyville City council and the Shelbyville Municipal Planning Commission.

OPINION

The sole issue in this appeal is whether a zoning ordinance amendment notice published by the City of Shelbyville was sufficient as a matter of law.

The material facts are not in dispute. Norma Wright became owner of a 92.32 acre tract in Shelbyville ("Property") in March of 2003. In April of 2003 the Property was deeded to Norma Wright and her husband, Tommy Wright, as tenants by the entirety. Later, Tommy Wright quitclaimed his interest in the Property to his wife, Norma Wright, on November 11, 2004. Both the Wrights own businesses concerned with rock quarrying. Mr. Wright is the majority stockholder of Wright Paving Contractors, Inc., and Mrs. Wright owns the majority interest in Custom Stone, LLC.

The Property was in a I-2 zoning district in March of 2003 when the Property was first conveyed to Norma Wright. Mining and quarrying activity was allowed as a use in the I-2 zoning district subject to certain conditions, thus making mining and quarrying a conditional use.

On February 12, 2004, the Wrights submitted a letter to the City of Shelbyville Board of Zoning Appeals requesting approval of Special Conditions for Mining and Quarrying Activity. A hearing was scheduled for the request on February 26, 2004, but was postponed at the Wrights' request.

Ordinance No. 742 was introduced by the City Council of Shelbyville and passed on first reading on May 13, 2004. Ordinance No. 742 proposed, among other things, to delete mining and quarrying as a conditional use in the I-2 zoning district. It also created a new industrial zoning district called I-3, which included mining and quarrying as a conditional use. This new I-3 district did not apply to designated areas, but was a "floating" district that could be placed on property anywhere in the city.

All of the notices published in the *Shelbyville Times Gazette* about Ordinance 742 were identical.¹

Ordinance . . . to amend the Zoning Ordinance for the City of Shelbyville by amending Article V, Zoning Districts, Section 5.050, Specific District Regulations, as approved by the Shelbyville Municipal Planning Commission.

On July 8, 2004, the Shelbyville City Council passed Ordinance 742 on third and final reading.

On November 18, 2004, the Wrights requested the Planning Commission to consider its previous request to allow mining and quarrying activities as a conditional use under the prior I-2 zoning. The Planning Commission advised the Wrights that it would not consider the plan unless it was submitted under the new I-3 zoning provisions.

Consequently, in December of 2004 the Wrights submitted their request to have their Property rezoned to I-3, thus allowing the conditional mining and quarrying use. Concerns were expressed in opposition to the Wrights' rezoning request about the Property's proximity to schools and businesses and the negative effects of blasting from mining and quarrying activity. Local property owners likewise expressed opposition.

The Wrights' request to rezone their property to I-3 was unanimously denied by the City Council on the grounds that the Property was too close to residential and community facilities and that a quarry would adversely affect property values and property use.

¹ The only difference between the notices published on May 11, June 8, and June 15 was whether the ordinance was on its first, second, or third reading.

Tommy Wright, Norma Wright, Wright Paving Company, Inc. and Custom Stone, LLC (collectively referred to as “Wrights”) sued the City of Shelbyville, the Shelbyville City Council, and the Shelbyville Municipal Planning Commission (collectively referred to as “Shelbyville”) alleging a variety of errors in the enactment of Ordinance 742 and the consideration of the Wrights’ zoning requests, all in an effort to have quarrying approved for the property.

First, the complaint alleges that Ordinance 742 is invalid because it was not “sufficiently definite to notify citizens of their rights” and fails to establish standards sufficient to govern Shelbyville with respect to uniform treatment of people. Second, it is alleged that Ordinance 742 is an unconstitutional deprivation of property. Third, the Wrights allege the Planning Commission is estopped from refusing to consider its application under the I-2 zoning designation. Fourth, the Wrights allege the Planning Commission erred in failing to recommend to the City Council that the Wrights’ property be rezoned to I-3. Finally, the Wrights argue that the City Council erred when it denied their I-3 zoning request.

On December 18, 2008, the trial court granted Shelbyville’s motion for summary judgment finding that Ordinance 742 complied with all notice requirements, that the Wrights had no right to require that their request under the prior I-2 zoning be considered, and that the denial of the Wrights’ I-3 zoning application was not illegal. The Wrights then moved to dismiss any remaining claims without prejudice, and the trial court granted the dismissal. Consequently, a final order was entered January 13, 2009.

The Wrights appealed relying solely on the issue whether the public notice given by Shelbyville as required by Tenn. Code Ann. § 13-7-203 was adequate as a matter of law.

I. STANDARD OF REVIEW

What constitutes “notice” under Tenn. Code Ann. § 13-7-203(a) is a matter of statutory construction. Construction of a statute is a question of law which appellate courts review *de novo*, without a presumption of correctness of the trial court’s findings. *Barge v. Sadler*, 70 S.W.3d 683, 686 (Tenn. 2002); *Hill v. City of Germantown*, 31 S.W.3d 234, 237 (Tenn. 2000); *Gleaves v. Checker Cab Transit Corp., Inc.*, 15 S.W.3d 799, 802 (Tenn. 2000); *Exxonmobil Oil Corp. v. Metro. Gov’t. of Nashville and Davidson County*, 246 S.W.3d 31, 35 (Tenn. Ct. App. 2005).

With regard to an ordinance, however, there is a presumption that an ordinance is valid and the party questioning its validity bears the burden of proof. *Hutcherson v. Criner*, 11 S.W.3d 126, 132 (Tenn. Ct. App. 1999) (citing *Town of Surgoinsville v. Sandidge*, 866 S.W.2d 553, 555 (Tenn. Ct. App. 1993)).

II. ANALYSIS

The issue presented herein requires a two-step analysis. First, it must be determined what type of notice is required in order to amend zoning restrictions under the governing statute(s). The second step is then to decide whether the notice published in the *Shelbyville Times Gazette* met this standard.

A. Notice Required by Tenn. Code Ann. § 13-7-203(a)

Tenn. Code Ann. § 13-7-203 provides as follows:

(a) Before enacting the zoning ordinance or any amendment thereof, the chief legislative body shall hold a public hearing thereon, at least fifteen (15) days' notice of the time and place of which shall be published in the official municipal journal or in a newspaper of general circulation in the municipality.

...

(c) Notwithstanding the requirements of any municipality's charter to the contrary, the entire text of a comprehensive zoning ordinance need not be published in a newspaper. For those municipalities whose charters do require ordinances to be published in a newspaper, it shall be sufficient for the comprehensive zoning ordinance that its caption and a complete summary be published.

It must first be noted that Tenn. Code Ann. § 13-7-203 is silent concerning the contents or substantive requirements of the notice. In construing what notice is required, the primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *Sullivan v. Chattanooga Medical Investors, L.P.*, 221 S.W.3d 506, 511 (Tenn. 2007) (citing *Carson Creek Vacation Resorts, Inc. v. Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993)). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. *Sullivan*, 221 S.W.3d at 511. As our Supreme Court has said, "[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001) (citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)).

No one argues that Tenn. Code Ann. § 13-7-203(a) requires only that notice of a public hearing be published. The parties appear to agree that the notice must be sufficient enough to enable

landowners to determine whether the proposed amendment affects the zoning classification or permitted land uses attached to their land.² This conclusion is supported by applicable caselaw.

As a general rule, statutes that require notice before adoption or amendment of zoning ordinances are construed as requiring that the substance or content of the notice “reasonably apprise those interested that the contemplated action is pending.” 96 A.L.R.2d 449 *Validity and Construction of Statutory Notice Requirement Prerequisite To Adoption or Amendment of Zoning Ordinance or Regulation* §21. According to 1 ANDERSON, AMERICAN LAW OF ZONING, § 4.14 *Contents of Notice* (4th ed.):

A notice of hearing will be reviewed not only to determine whether it was published or serviced in a timely manner, but also to ascertain whether it was reasonably sufficient to inform the public of the essence and scope of the zoning regulation under consideration. The power of the legislative authority of a municipality to enact a zoning ordinance is limited by the stated purpose in the notice of hearing. In general, the courts strictly construe the notice, and where there is doubt as to its sufficiency, such doubt will be resolved against the notice. The usual requirement with respect to contents is that of “fair” notice. Such requirement is met if it gives the average reader reasonable warning that land in which he has an interest may be affected by the legislation proposed. Most courts will find the notice adequate if it is sufficient to place property owners on inquiry.

(citations omitted).

Tennessee has adopted this standard. *State ex rel. SCA Chemical Services, Inc. v. Sanidas*, 681 S.W.2d 557, 565 (Tenn. Ct. App. 1984) (quoting decision from Washington Supreme Court that the “purpose of notice . . . is to fairly and sufficiently apprise those who may be affected by the proposed action of the nature and character of the amendment so that they may intelligently prepare”).

Consequently, we find Tenn. Code Ann. § 13-7-203(a) requires that the published notice of a change in permitted land use must be specific or complete enough to enable the average person to determine whether his or her property might be affected by the proposed change.

B. Whether the Contents of Ordinance 742 Were Sufficient

The point of departure for determining whether the published notice for Ordinance 742 is adequate is the language of the publication itself. The published notice provides that the amendment will amend Section 5.050, Specific District Regulations in Article V of the Shelbyville Zoning

²It is assumed by all parties that the notice required by Tenn. Code Ann. § 13-7-203 meets constitutional thresholds since no one argues the statute itself is unconstitutional. It is presumed that legislative acts are constitutional. *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn. 2007) (citing *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003)).

Ordinance. Other than this reference to Section 5.050, there is no other information provided about the substance of the proposed amendment or what property may be affected.

Reference to “Section 5.050 Specific District Regulations” is not sufficient to apprise property owners that the amendment may affect them. A review of Section 5.050 shows that it affects all property in Shelbyville since it provides the uses for all twelve zoning districts including residential, commercial and industrial. This section alone contains over 40 pages of detailed zoning uses and restrictions affecting all twelve districts. Consequently, simple reference to the zoning ordinance being amended is, in effect, no notice whatsoever of what property may be affected or how. In effect, all the published notice provides is that there will be a public hearing to consider unspecified amendments to existing zoning that will affect unspecified zoning districts.

We conclude, based on the published notice for Ordinance 742, that landowners in the I-2 zoning district, including the Wrights, were not apprised that the proposed amendment might affect their property. Failure to substantially comply with statutory requirements renders the zoning ordinance invalid. *Edwards v. Allen*, 216 S.W.3d 278, 292-93 (Tenn. 2007).³ Accordingly, we hold that Ordinance 742 invalid.

The trial court is reversed. Costs of this appeal are taxed to the appellees, the City of Shelbyville, the Shelbyville City Council, and the Shelbyville Municipal Planning Commission for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE

³ Shelbyville did not attempt to argue on appeal that public or private reliance created an exception to the void ab initio doctrine. See *Edwards*, 216 S.W.3d at 292 - 93.